IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 48 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NEW BHARAT ENGINEERING WORKS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 48 of 1987
MR BB NAYAK FOR MR MANISH R BHATT for Appellant.
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 28/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

The following question is referred to us by the Income Tax Appellate Tribunal, Ahmedabad Bench "B" for the assessment years 1976-77, 1979-80 and 1980-81 :

"Whether, in law and on facts, the assessee is entitled to weighted deduction under section 35B of the Income-tax Act,1961 on expenditure by way of interest in respect of the period of credit granted to the foreign customers under the export contracts ?"

2. Heard Mr.B.B.Nayak, learned Counsel for the Revenue. Though served, none appeared for the respondent.

3. Our attention was drawn to the finding that the assessee had paid interest for the period of credit granted to foreign customers to the Gujarat Export Corporation Limited at Rs.30,209/-. The assessee claimed deduction under section 35B(1)(b) of the I.T.Act. Mr.Nayak submitted that in view of the decision of this Court in Testeels Ltd. vs. C.I.T. 205 I.T.R.230, the interest paid by the assessee to an institution within India would not be covered by sub clause (viii) and therefore it would not be eligible for weighted deduction. In view of the admitted fact that for the credit on the exported goods interest was paid to Gujarat Export Corporation Limited within India, having regard to the aforesaid decision of this Court, it will have to be held that the assessee was not entitled to weighted deduction under section 35B of the Act. An expenditure incurred by way of interest payment in India in respect of the period of credit granted to the foreign customers against the export contract is not an expenditure incurred wholly and exclusively on performance of services outside India in connection with or incidental to the execution of such contract for supply outside India of any goods, facilities or services and hence such expenditure is not eligible for weighted deduction. We accordingly answer the question in the negative i.e. in favour of the revenue and against the assessee.

4. The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta, J)

m.m.bhatt